1735.

SUPREME COURT OF THE UNITED STATES.

No. 174.

WILLIAM S. HUNGERFORD, APP'T,

VS.

JOHN SIGERSON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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WILLIAM S. HUNGERFORD
vs.
JOHN SIGERSON. } In equity.

Transcript of the record for the Supreme Court of the United States.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukie, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-five: Present, the honorable Andrew G. Miller, judge of said court, presiding; John R. Sharpstein, esq., attorney; Stephen V. R. Ableman, marshal; Benjamin K. Miller, clerk, among others, were the following proceedings, to wit:

WILLIAM S. HUNGERFORD
vs.
JOHN SIGERSON.

Be it remembered, that heretofore, to wit, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty-four, the said William S. Hungerford, by James H. Knowlton, esq., his solicitor, filed in said court his bill of complaint against the said John Sigerson, in the words and of the tenor following, to wit:

Bill of complaint.

To the judges of the district court of the United States for the district of Wisconsin:

William S. Hungerford, of the Falls of Saint Croix, in the county of Polk, and State of Wisconsin, a citizen of said State of Wisconsin, brings this his bill against John Sigerson, of the city of Saint Louis, in the State of Missouri, and a citizen of the State of Missouri, whom your orator prays may be made a defendant to this your orator's bill of complaint; and thereupon, your orator complains, and says that, for some number of years prior to the fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-one, he was somewhat extensively engaged in the business of lumbering with divers individuals a greater part the time, and particularly with one Richard M. Livingston, and that in the carrying on of said business, he required a large capital, and he was also frequently obliged to obtain a credit for considerable

the full amount paid thereon for principal and as interest on the aforesaid sum of fifteen hundred dollars, and to no other, further, or greater extent; and your orator charges the fact so to be.

And your orator further shows, that he had no dealings with the said Sigerson, nor did he become further indebted to the said Sigerson, after the said fifteenth day of September, in the year of our Lord one thousand eight hundred and fifty-one, up to and including the first day of December, in the year of our Lord one thousand eight hundred and fifty-one; and he charges the facts so to be.

And your orator further shows, that on the first day of December, in the year of our Lord one thousand eight hundred and fifty-one, your orator and the said Sigerson had a conference upon the subject of the indebtedness of your orator to the said Sigerson at that time, and at said conference, in conversation, it was conceded by the said Sigerson that your orator was indebted to him in a sum varying but little from the sum of four thousand and two hundred dollars; and your orator charges the facts so to be.

And your orator further shows and states, that on the day and at the particular time last aforesaid, in the said last-mentioned conversation, the said Sigerson in substance said to your orator, that he, said Sigerson, wished or wanted your orator to give him, said Sigerson, his, your orator's, promissory note for the sum of ten thousand dollars, payable one day after date, and that he, said Sigerson, wanted the same for the purpose of using it as a collateral upon which to raise money, and that if your orator would so give his note to the said Sigerson, he, said Sigerson, would not sell or dispose of the same, so that your orator would ever be troubled upon it, (said note,) but that he, said Sigerson, would keep the same, and that he, said Sigerson, would not press your orator for payment, and that your orator could pay him, said Sigerson, when he, your orator, got through with his difficulties, and got his pay from Cushing, (meaning Caleb Cushing,) with whom your orator then had a suit of and concerning the mills and other property at the Falls of St. Croix, in the then county of St. Croix, now the said county of Polk, and which said suit was then and now is pending undetermined in the circuit court in and for the county of Dane, in the said State of Wisconsin, in equity, and to which suit and the matters therein involved the said Sigerson in said conversation referred; and your orator charges the fact so to be.

And your orator further shows and states that, reposing the utmost and unlimited confidence in the honor, honesty, and integrity of the said Sigerson, and implicitly confiding in the friendly feelings of the said Sigerson towards your orator, and feeling under great obligations to the said Sigerson for his many kind offices, and the great pecuniary aid which he, the said Sigerson, had as aforesaid rendered your orator, and for the purpose of accommodating the said Sigerson in the requested behalf, your orator, as requested by the said Sigerson, made and delivered to the said

Sigerson his promissory note in writing, bearing date on the day last aforesaid, and which said note was and is of the tenor and effect following, that is to say: "$10,000. St. Louis, Dec. 1st, 1851. One day after date I promise to pay to the order of John Sigerson ten thousand $\frac{000}{100}$, for the value received, without defalcation or discount, negotiable and payable at Bank of State of Missouri."

(Signed) "WM. S. HUNGERFORD."

And your orator further states, that there was no other or further consideration for said last-mentioned note than that which is in this bill above stated; and your orator charges the fact so to be.

And your orator further states, that to this time there never has been a settlement of and statement of accounts made between your orator and the said Sigerson, as principal and surety, or otherwise, than such as is in this his bill above stated; and he charges the fact so to be.

And your orator further states, that the said Sigerson, on or about the tenth day of August, A. D. 1852, caused to be issued a writ of summons out of and under the seal of the United States district court for the district of Wisconsin, duly and in due form of law tested, and directed to the marshal of the said district, thereby commanding him to summon your orator to appear and answer the said John Sigerson, in a plea therein named, to the damage of the said Sigerson, in the sum of dollars, also therein named, which said writ of summons was afterwards, and on or about the twenty-sixth day of the same month and year last aforesaid, by the said marshal, in due manner served upon your orator. And thereupon, afterwards, such proceedings were thereupon, in said last-named suit, in said last-named court, had that the said John Sigerson, by the judgment and consideration of said last-mentioned court, and on or about the eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-four, recovered upon said last-mentioned promissory note the sum of eleven thousand two hundred and fifty-eight dollars and thirty-three cents damages, and the further sum of eighty-three dollars and fifty cents for his costs and charges in that behalf expended; and your orator charges the fact so to be.

And your orator further says, that he is advised by counsel, (and that he believes said advice is well founded in law,) that he had no defence to said last-mentioned note, which he could have made in the aforesaid suit upon said note, and that his only relief is in a court of equity.

And your orator further says, that said judgment is wrong and highly unjust, in so far as the same exceeds in amount the sum of four thousand two hundred and seventy-five dollars, and interest thereon, from the said first day of December, in the year of our Lord one thousand eight hundred and fifty-one, up to the time of

rendition of the judgment as aforesaid, which excess your orator does not owe the said Sigerson, nor does your orator owe any part of said excess; and your orator charges the fact so to be.

And your orator states and insists, that the said Sigerson ought to be perpetually restrained, by the order and injunction of this honorable court, from collecting the aforesaid judgment, except so far as your orator is to him indebted, as is in this bill above stated; and to that extent your orator is willing and hereby offers to pay the said Sigerson, together with his aforesaid costs.

And your orator further states, that the said Sigerson ought to be compelled to account with your said orator of and concerning the aforesaid premises and every part thereof, and that he ought also to fully and truly discover the exact sum in which, in truth, fact, and justice, your orator is to him, said Sigerson, indebted.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may upon his corporal oath, and according to the utmost of his knowledge, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter mentioned and set forth as by the note hereunder written he is required to answer, that is to say:

1st. Whether your orator was, for some number of years prior to the 15th day of September, 1851, *was* engaged in the business of lumbering, and particularly with one Richard M. Livingston, and became indebted, alone and with the said Livingston, to divers individuals; and being so indebted, your orator and the said Livingston became and were liable to pay the same with the interest thereon, as above charged and set forth.

2d. Whether your orator, by agreement with said Livingston, became obliged to pay the whole of said indebtedness, and being so obliged, whether your orator procured the said defendant to aid him in so doing, and whether the said defendant, in so aiding your orator, endorsed any note or notes made by your orator and said Livingston to their said creditors, as above charged and set forth.

3d. Whether the said defendant became fixed upon any note or notes as such endorser, and paid such note or notes as surety for your orator; and whether the said defendant further aided your orator by making further advances to your orator, and by paying divers sums of money to your orator, as above charged and set forth.

4th. Whether on the 20th day of January, 1846, or at any other time, the said defendant executed to David B. Hill a note for 100,000 feet of lumber, estimated at the time to be worth fifteen dollars per thousand feet—said lumber to be delivered, and said note paid on the 1st day of September, 1846, with interest at the rate of ten per cent. per annum. on fifteen hundred dollars, the estimated value of said lumber from the time said note became due until the same should be paid. And whether the said defendant

executed said note for the benefit of your orator, with the understanding that it was to be paid by your orator, and whether said note has ever been paid by the said defendant or at all, as above charged and set forth.

5th. Whether your orator, to relieve said defendant and secure him from or against the payment of said last-mentioned note, executed and delivered to said Hill your orator's promissory note for the sum of three thousand seven hundred and eighteen dollars and seventy-five cents, payable four years after date, which date was the 18th day of May, 1854, and whether said note, so executed and delivered by your orator to said Hill, was for the estimated value of said 100,000 feet of lumber, with interest on said sum of fifteen hundred dollars to the time when said note became due according to the tenor and effect thereof.

6th. Whether the said Hill, at the time of the giving of said note last above mentioned, did, for a valuable consideration, in writing, over his proper signature, agree not to sue or in any way coerce payment of said defendant upon said note, until the failure of your orator to pay the same at maturity, and whether the said Hill further agreed at the time aforesaid, that he, the said Hill, should not and would not take or have recourse on the said defendant, until his (said Hill's) legal remedies were exhausted against your orator.

7th. Whether the said defendant, on or about the 15th day of September, 1851, or at any other time, and what time, admitted and stated that your orator was indebted to him, the said defendant, in about the sum of five thousand dollars as above herein charged and set forth.

8th. Whether said defendant paid to and advanced for your orator, in the whole, from ten to fifteen thousand dollars, or what amount, and whether your orator paid to and for the said defendant large sums of money, from six to eleven thousand dollars, or what amount as above herein charged and set forth?

9th. Whether, at the time of the statement and admission made by the defendant, your orator was indebted to the said defendant in the sum of four thousand two hundred dollars, or thereabouts, as above charged and set forth, after allowing the just credits of your orator for the services rendered for the said defendant as above herein charged and set forth. And whether more or less, and what was the amount, and whether said services were not for about the term of nine months, and were worth the money $100 per month, or what amount were they worth?

10th. Whether up to and including the fifteenth day of September, 1851, your orator was liable or responsible to said defendant for any greater sum than about four thousand two hundred dollars, or for any purpose, or by reason of anything other than as hereafter stated; and if for a greater sum, how much, and how did it accure?

11th. Whether your orator had any dealings with the said defendant, or become further indebted to him, the said defendant, after the said 15th day of September, 1851, up to and including the first day of December, 1851; and if any, what was the value of the transaction or transactions?

12th. Whether your orator and the said defendant, on the first day of December, 1851, (or at any other time, and if so, when,) had a conference upon the subject of the indebtedness of your orator to the said defendant, and whether at said conference, in conversation, it was conceded by the said defendant, that your orator's indebtedness to said defendant was a sum varying but little from four thousand two hundred dollars, and what amount was conceded by the defendant to be due and owing from your orator to him?

13th. Whether at the time of the conference last above mentioned, to wit, on the first day of December, 1851, or at any other time, (and if so, when,) did the said defendant, in conversation, request your orator to give him, the said defendant, your orator's promissory note for the sum of ten thousand dollars, payable one day after date; and whether the defendant then and there (or elsewhere) told your orator that he wanted said note for the purpose of collateral security upon which to raise money, and whether the defendant then and there (or elsewhere) told your orator that he wanted said note for any other purpose, and for what purpose, and whether the defendant told your orator at the time of said last-mentioned conference, that if your orator would give his said note to him, the said defendant, that he, the said defendant, would not sell or dispose of the same; and that your orator would never be troubled upon it, (said note;) that he, the said Sigerson, would keep the same, and that he, the said Sigerson, would not press your orator for payment, and that your orator could pay him, the defendant, when he, your orator, got through with his difficulties, and got his money from Cushing, (meaning Caleb Cushing,) and whether the foregoing, if not in fact the words, is yet in substance, the statement made by the defendant to your orator at the time of the conference last above mentioned, and if not, what were the statements then and there made by the defendant to your orator?

14th. Whether your orator, on the first day of December, 1851, or at any other time, had a suit pending with the said Caleb Cushing, which said suit was then, and is still, pending and undetermined; and whether the said defendant, in conversation last above mentioned, and alluding to the difficulties of your orator, had reference to said suit?

15th. Whether your orator did, on the first day of December, 1851, at the request of the said defendant, and for the purpose of accommodating the said defendant, execute and deliver to the said defendant his promissory note, in writing, which said note was and is of the tenor and effect following, that is to say:

"$10,000. "ST. LOUIS, *Dec.* 1*st*, 1851.

"One day after date, I promise to pay to the order of John Sigerson ten thousand $\frac{00}{100}$ dollars for value received, without defalcation or discount, negotiable and payable at the Bank of State of Missouri.

(Signed) "WM. S. HUNGERFORD."

And whether there was any further or other consideration for the making and delivery of said note by your orator to the said defendant, except the indebtedness of forty-two hundred dollars or thereabouts, and what was such consideration?

16th. Whether your orator and the said defendant has ever had any settlement or statement of accounts made between your orator and the said defendant as principal and surety, or otherwise, than such as is herein above set forth in this your orator's bill of complaint?

17th. Whether the said defendant did, on or about the 10th day of August, A. D. 1853, cause a suit to be instituted in the district court of the United States for the district of Wisconsin, upon the note described above in this bill, and the 16th interrogatory thereof, and whether such proceedings were had in said court, that afterwards, on or about the 11th day of January, A. D. 1854, judgment was rendered in said court upon the said promissory note against your orator in favor of the said defendant, for the sum of eleven thousand two hundred and fifty-two dollars and thirty-three cents damages, and the further sum of eighty-three dollars and fifty cents, for the costs and charges of the said defendant in that behalf expended, as above set forth in this bill of complaint?

Prayer.

Your orator therefore asks the aid of this court in the premises; and that the said defendant may be compelled to account with your said orator of and concerning the aforesaid premises, and every part thereof, and fully and truly discover the exact sum in which your orator is indebted to the said defendant, and that an order be made by this honorable court, staying all proceedings upon the said judgment, until the amount of such indebtedness shall be ascertained; and that the amount being so ascertained under the rules and practice of this court, the said defendant may thereafter be perpetually enjoined from collecting the aforesaid judgment, except such amount thereof as your orator is justly indebted to him, the said defendant, or that your orator may have such further and other relief in the premises as the nature and circumstances of this case may require, and as shall seem meet to this honorable court.

May it please the court to grant unto orator your a writ of subpœna, issuing out of and under the seal of this court, to be directed to the said John Sigerson, thereby commanding him at a certain day, and

under a certain penalty therein specified, personally to be and appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand, to perform, and abide such further order, direction, and decree therein as to this honorable court shall deem proper and agreeable to equity.

WM. S. HUNGERFORD.
KNOWLTON & CROZIER,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of Wiscousin, ss:

On this 16th day of August, in the year of our Lord one thusand eight hundred and fifty-four, came before me Wm. S. Hungerford, and made oath that he had read the foregoing bill by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information and belief; and as to those matters, he believes it to be true.

B. K. MILLER,
Clerk, &c.

NOTE.—The defendant, John Sigerson, is required to answer the interrogatories, number, respectively: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17.

JAMES H. KNOWLTON,
Sol'r for Comp't.

Whereupon a subpœna issued, as follows:

Subpœna.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America, to John Sigerson, [SEAL.] greeting:

You are hereby commanded that you personally appear before the judge of the district court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of October next ensuing, at Milwaukie, to answer a bill of complaint exhibited you in our said court, by William S. Hungerford. And to do further, and receive what our said court shall have considered in that behalf: and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said John

Sigerson, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukie, in the said district, this 16th day of August, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-ninth.

B. K. MILLER, *Clerk.*

JAMES H. KNOWLTON, *Solicitor.*

It is ordered by our said court, that the said John Sigerson, the defendant aforesaid, do enter his appearance in this suit in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

And same day, to wit, "August 16th, 1854, on motion of the said complainant, by his solicitor, it is ordered, that if the said John Sigerson cannot be found, that the subpœna in this cause be served on Asahel Finch, his attorney of record, in a suit in this court, wherein John Sigerson is plaintiff, and William S. Hungerford is defendant."

Which said subpœna is returned with the following endorsement thereon, to wit:

"Served by delivering a copy of the within subpœna to Asahel Finch, attorney for the within-named defendant." August 17th, 1854.

Fee, $2 36

S. V. R. ABLEMAN,
U. S. Marshal.

And afterwards, to wit, on the 25th day of August, A. D. 1854, came the complainant, by his solicitor, and moved the court for an order staying all proceedings on the judgment referred to and described in complainant's bill of complaint.

And afterwards, to wit, on the 29th day of said month of August, A. D. 1854, came the said defendant and filed his affidavit, as follows:

U. S. DISTRICT COURT,
For District of Wisconsin.

WILLIAM S. HUNGERFORD
vs.
JOHN SIGERSON.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

John Sigerson, defendant in the above-entitled suit, being duly

sworn, says, that he has heard read the bill of complaint in this cause; that the allegation in said bill, to the effect that this deponent, on Sept. 15, 1851, admitted or stated that the said Hungerford was indebted to deponent only in the sum of five thousand dollars, is wholly untrue; and deponent utterly denies ever having made such admission or statement.

And deponent further says, that on the 1st day of December, A. D. 1851, at the city of St. Louis and State of Missouri, an interview took place between the said Hungerford and this deponent, in the presence of John D. Taylor, concerning the indebtedness of the said Hungerford to deponent at that time; that the said indebtedness was for money advanced and services by this deponent to the said Hungerford rendered, and, as deponent then believed and still believes, such indebtedness amounted in fact to a larger sum than $10,000; that a portion of such indebtedness was unliquidated; that said Hungerford, in the first place, offered to give deponent his note for the sum of $7,500, but deponent declined to take the same; that the said Hungerford then requested deponent to mention an amount at which he would be willing to settle with him; that deponent then informed said Hungerford that he would take his note for $10,000, payable one day after date; that he considered that sum much less than he was in fact entitled to, but would settle the account between them for such a note. The said Hungerford, without any hesitation, made and executed the note immediately and delivered the same to deponent; and that the note so made and delivered is the same upon which this deponent recovered judgment in this court against the said Hungerford, and a copy of said note is set forth in said bill of complaint, and the judgment is the same, as deponent believes, as that referred to in said bill of complaint.

And deponent says that the allegation in said bill that the said note was given by said Hungerford at the request of this deponent, for the accommodation of deponent, and to enable deponent to raise money by using said note as collateral, is untrue and without any foundation.

And deponent says that said note was given as aforesaid, for a real and actual indebtedness as aforesaid, and upon a settlement and compromise of the claims of this deponent against the said Hungerford, and for no other purpose or object.

And deponent further says that the judgment referred to in the the said bill of complaint was obtained in this court; that the said Hungerford appeared, by his attorneys and counsellors, in said suit, and filed a plea of the general issue and a special notice; and that the judgment was rendered upon a verdict delivered by a jury who tried the said issue.

And deponent further says that a copy of an affidavit made by the said John D. Taylor is hereto attached; that such affidavit was made in an equity suit pending in the circuit court for Dane

county, and State of Wisconsin, and the promissory note referred to in said affidavit is the same as that mentioned and set forth in the said bill of complaint.

And deponent further says, that the chattel note given to the said Hill, referred to in said bill of complaint, formed no part of the consideration for the said promissory note so given as aforesaid by the said Hungerford to him, and had nothing to do with the said settlement.

And deponent further says, that the subpœna in this suit is returnable on the first Monday of ; nor was deponent aware of the character of the said bill filed, till his arrival in the city of Milwaukie, on the 21st day of August inst., and deponent has not since *be* able to prepare his answer thereto.

JOHN SIGERSON.

Subscribed and sworn to before me, this 28th day of August, A. D. 1854.

B. K. MILLER,
Clerk.

And afterwards, to wit, at a special term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, on the first Monday (being the fourth day) of September, A.D. 1854, at the city of Milwaukee: Present, the honorable Andrew G. Miller, judge of said court, presiding.

On the first day of said term, to wit, on the fourth day of said month of September, A. D. 1854, the following proceedings were had, to wit:

"WILLIAM S. HUNGERFORD
vs.
JOHN SIGERSON. } *In equity.*

This day came the parties, by their counsel, and the motion of the complainant for an order to stay proceedings upon the judgment heretofore entered against him having been argued at a former day at chambers, on consideration whereof, and of the bill and affidavit on file, it is now here ordered by the court that the said order be and is hereby disallowed."

And afterwards, to wit, on the sixteenth day of October, A. D. 1854, came the said complainant, by his solicitor, and filed his præcipe for an alias subpœna, which said præcipe is as follows:

DIS'T COURT U. S.,
Dis't of Wisconsin.

WILLIAM S. HUNGERFORD
vs.
JOHN SIGERSON. } In chancery.

Please issue subpœna in above-entitled cause, returnable first Monday of November next.

JAMES H. KNOWLTON,
Sol. for Comp't.
By LAKIN & STEERER.

To B. K. MILLER, esq., *Clerk.*

Whereupon an alias subpœna issued as follows:

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America, to John Sigerson, [SEAL.] greeting:

You are hereby commanded, as heretofore commanded, that you personally appear before the judge of the district court of the United States of America for the district of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of November next ensuing, at Milwaukie, to answer to a bill of complaint, exhibited against you in our said court, by William S. Hungerford.

And to do further and receive what our said court shall have considered in that behalf: and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said John Sigerson, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukie in the said district, this 10th day of October, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-ninth.

B. K. MILLER,
Clerk.

JAMES H. KNOWLTON, *Solicitor.*

It is ordered by our said court, that the said John Sigerson, the defendant aforesaid, do enter his appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

Which said alias subpœna is returned with the following endorsement thereon, to wit:

"Served on the within-named defendant, John Sigerson, personally by delivering to him a copy of original subpœna. October 16, 1854.

Fees $2 36.

S. V. R. ABLEMAN,
U. S. Marshal."

And afterwards, to wit, on the first day of November, A. D. 1854, came the said defendant, John Sigerson, by Arthur McArthur, esq., his solicitor, and entered his appearance, and also same day filed his demurrer to the complainant's bill of complaint; which said demurrer is as follows:

In equity.

UNITED STATES DISTRICT COURT,
For the district of Wisconsin.

The demurrer of John Sigerson, defendant, to the bill of complaint of William S. Hungerford, complainant:

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the said complainant hath not, in and by his said bill, made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against this defendant, wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

A. McARTHUR,
Sol'r for Def't.

I hereby certify, that the foregoing demurrer is well founded in point of law, and that I am of counsel for the said John Sigerson.

ARTHUR McARTHUR,
Of Counsel for John Sigerson.

Oct. 30, 1854.

UNITED STATES DISTRICT COURT,
For the District of Wisconsin.

WILLIAM S. HUNGERFORD
vs.
JOHN SIGERSON.

DISTRICT OF WISCONSIN, *ss:*

Arthur McArthur, of the city of Milwaukie, being duly sworn.

says, that he is solicitor for the said defendant, John Sigerson; that the said John Sigerson resides in the city of St. Louis, and State of Missouri, and is not now in the State of Wisconsin, and deponent makes this affidavit on his behalf, the said Sigerson not now being here to make it in person; and deponent further says, that the within demurrer is filed in good faith, and is not interposed for delay. And further says not.

ARTHUR McARTHUR.

Subscribed and sworn to before me, this 1st day of Nov., A. D. 1854.

B. K. MILLER.

And afterwards, to wit, at the said term of January, A. D. 1855, on the third day thereof, to wit, on the third day of January, A. D. 1855, the following proceedings were had, to wit:

WILLIAM S. HUNGERFORD, vs. JOHN SIGERSON. } In equity.

This day, upon due consideration of the demurrer to the complainant's bill of complaint, and the arguments of counsel thereon, it is ordered by the court that the said demurrer be and is hereby sustained; and it is further ordered and decreed by the court, that the said bill be and hereby is dismissed, and that the complainant pay the costs to be taxed, and in default thereof, that execution be issued for the same.

A. G. MILLER.

And afterwards, to wit, on the fourth day of said term, to wit, on the fourth day of said month of January, A. D. 1855, the following other proceedings were had, to wit:

WILLIAM S. HUNGERFORD vs. JOHN SIGERSON. } In equity.

This day came the complainant and prayed the court for an appeal to the Supreme Court of the United States.

Whereupon, is ordered by the court that an appeal from the decree in this cause to the Supreme Court of the United States be and hereby is allowed, on the complainant giving bond, with surety, in the sum of five hundred dollars. Appeal bond of complainant, with James H. Knowlton as surety, in the penalty of $500, filed and appeal taken.

Which said bond is as follows:

Know all men by the presents, that we, William S. Hungerford

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as principal, and James H. Knowlton as surety, are held and firmly bound, jointly and severally, unto John Sigerson in the penal sum of five hundred dollars lawful money of the United States of America, to be paid to the said John Sigerson, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, and each and every of them, firmly by these presents. Sealed with our seal, dated this 4th day of January, A. D. 1855.

Whereas, the said William S. Hungerford filed his bill of complaint in the district court of the United States for the district of Wisconsin, against the said John Sigerson defendant in equity; and whereas, the said defendant, afterwards, to wit, on the first day of November, A. D. 1854, filed his demurrer to said bill of complaint, which said demurrer was duly argued and submitted to the court; and whereas, on the 3d day of January, A. D. 1855, at a stated term of said court, the said court did decide said cause, and did then and there sustain said demurrer to said bill of complaint, and did then and there order and adjudge that said demurrer be sustained, and that said bill of complaint be dismissed; and whereas, the said complainant did thereupon, and at the time of said order, decision, and decree, pray for an appeal therefrom to the Supreme Court of the United States of America, and did then and there duly make and perfect his appeal, agreeably to the order and requirements of the court:

Now, the condition of this bond is such, that if the said William S. Hungerford, or his legal representatives, shall prosecute his appeal to effect, and shall well and truly pay to the said John Sigerson, his legal representatives or assigns all such costs as the said Sigerson, his legal representatives or assigns, may recover against said Hungerford, or his legal representatives, in said cause, and shall abide such order and decree as shall be made in said cause, then this obligation to be void; otherwise to be and remain in full force and effect.

WILLIAM S. HUNGERFORD, [SEAL.]
JAMES H. KNOWLTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEORGE W. LAKIN,
BENJ. NEWHALL.

DISTRICT OF WISCONSIN, *ss:*

James H. Knowlton, the surety within named, being sworn, doth say that he is worth one thousand dollars over and above his debts and liabilities.

JAMES H. KNOWLTON.

Sworn and subscribed the 4th January, 1855.

A. G. MILLER,
Judge.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Benjamin K. Miller, clerk of the district court of the United States of America, for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukie, in the said district of Wisconsin, this twenty-first day of February, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the said United States the seventy-ninth.

B. K. MILLER,
Clerk.

THE UNITED STATES OF AMERICA, *ss:*

To John Sigerson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to an appeal filed in the district court of the United States for the district of Wisconsin, wherein William S. Hungerford is appellant, and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this fourth day of January, A. D. 1855, and of the independence of the United States the seventy-ninth.

A. G. MILLER,
Judge Dis. C't U. S.

[Endorsed:] William S. Hungerford, appellant, vs. John Sigerson appellee. Citation.

The within writ served personally, by showing the original and delivering a copy to A. McArthur. Feb'y 20, '55.

S. V. R. ABLEMAN,
Marshal.

Pr. C. C. COTTON,
Deputy.

Fees: Serv.....$2 00.
Copy..... 30.
Travel..... 06.

$2 36.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a special term of the district court of the United States of America, for the district of Wisconsin, begun and held according to law, at the city of Milwaukie, in said district of Wisconsin, on the first Monday (being the seventh day) of April, A. D. 1856: Present, the honorable Andrew G. Miller, judge of said court, presiding:

On the twenty-second day of the said term, to wit, on the eleventh day of June, A. D. 1856, the following proceedings were had, to wit:

WILLIAM S. HUNGERFORD
vs.
JOHN SIGERSON. } In equity.

This day came John Sigerson, the defendant and appellee, by his counsel, and presented to the court a certificate and mandate to the judge of this court from the Supreme Court of the United States.

Which said certificate and mandate are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judge of the district court of the United States, for the district of Wisconsin, greeting:
[SEAL.]

Whereas, lately, in the district court of the United States for the district of Wisconsin, before you, in a cause between William S. Hungerford, complainant, and John Sigerson, defendant, in equity, wherein a decree was rendered in favor of the said defendant, whereupon the said complainant prayed an appeal, which was duly allowed by the said district court, to remove the said cause to the Supreme Court of the United States, as by the inspection of the certificate of the clerk of the said court, under the seal of the said district court, which was brought into the Supreme Court of the United States agreeably to the act of Congress, and the rules of the said Supreme Court, in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-five, the said cause came on to be heard before the said Supreme Court, and it appearing that the appellant has failed to have his cause filed and docketed in conformity to the rules of this court, it is now here ordered and decreed by this court, that this appeal from the district court of the United States for the district of Wisconsin be, and the same is hereby docketed and dismissed with costs; and that the said defendant recover against the said complainant, William S. Hungerford, thirty-three dollars and twelve cents, for his costs herein expended, and have execution therefor, and that this cause be, and the same is hereby, remanded to the said district court. Dec. 27.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness, the honorable Roger B. Taney, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-five.

Costs of defendant: Clerk.....$13 12.
Attorney.....$20 00.

$33 12.

Taxed by

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Whereupon it is considered and ordered by this court now here, that the said John Sigerson do have and recover of the said William S. Hungerford ninety-four dollars and fifty cents, his costs about his said defence in this behalf by him expended, including therein the costs in the Supreme Court as taxed, and that he have execution therefor.

And afterwards, to wit, on the twenty-ninth day of August, A. D. 1856, came the complainant and prayed for an appeal to the Supreme Court of the United States. Whereupon, it is ordered by the court that an appeal from the decree in this cause to the Supreme Court of the United States be and hereby is allowed, on the complainant giving bond, with surety, in the sum of five hundred dollars. Appeal bond of complainant, with Lester Sexton as surety, in the penalty of five hundred dollars, filed and appeal taken.

Which said bond is as follows:

Know all men by these presents, that we, William S. Hungerford and Lester Sexton, are held and firmly bound unto John Sigerson in the full and just sum of five hundred dollars, to be paid to the said John Sigerson, his certain attorney, executors, administrators, or

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assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, lately, at a district court of the United States for the district of Wisconsin, in a suit depending in said court, between William S. Hungerford, complainant, and John Sigerson, defendant, in equity, a decree was rendered against the said William S. Hungerford; and the said William S. Hungerford having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said John Sigerson, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said William S. Hungerford shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

WILLIAM S. HUNGERFORD, [SEAL.]
LESTER SEXTON, [SEAL.]

Sealed and delivered in presence of—
B. K. MILLER,
C. K. MARTIN.

Approved by

A. G. MILLER,
Judge.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Benjamin K. Miller, clerk of the district court of the United States of America, for the district of Wisconsin, do hereby certify, that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukie, in the said district of Wisconsin, this first day of September, [SEAL.] in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the said United States the eighty-first.

B. K. MILLER,
Clerk.

The United States of America, to John Sigerson, greeting:

You are hereby cited and admonished to be and appear at a